

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CRAIG CUNNINGHAM,)	
)	
Plaintiff,)	Case No. 3:16-cv-00761-jdp
)	
v.)	Honorable Judge James D. Peterson
)	
MICHAEL MONTES, <i>et al.</i> ,)	Hon. Magistrate Judge Stephen L. Crocker
)	
Defendants.)	

PLAINTIFF’S PROPOSED FINDINGS OF FACT

Now comes Plaintiff, CRAIG CUNNINGHAM, by and through his attorneys, and for his Proposed Findings of Fact, Plaintiff states as follows:

1. Defendants offer “robocalling,” “predictive dialing,” and “virtual telemarketer” services. *Deposition of Michael Montes*, p. 12, lines 4-9 (January 14, 2019) previously filed as Dkt. No. 127.
2. Defendants’ “virtual telemarketer” services place telemarketing calls with prerecorded messages. *Montes Dep.* (Dkt. No. 127), p. 13, lines 9-20.
3. Defendants’ “robocalling system” places a high volume of calls at once, either in a randomized order or sequentially through a list of numbers. *Montes Dep.* (Dkt. No. 127), p. 14, lines 14-24; p. 15, line 13 through p. 16, line 1.
4. Once an account has been set up and the phone numbers have been loaded into Defendants’ dialing system, there is no further human intervention involved in placing the calls. *Montes Dep.* (Dkt. No. 127), p. 70, lines 5-13.
5. Defendants’ systems also allows for “predictive dialing” which places calls automatically in such a way as to try to predict when a telemarketer is available to

take a call if the recipient answers the phone. *Montes Dep.* (Dkt. No. 127), p. 16 line 14 through p. 18, line 2.

6. Defendant Michael Montes (“Montes”) provisions an account for new customers to allow them to place calls such as those Plaintiff alleges he received. Montes assists those customers in setting up telemarketing accounts with a Panamanian company known as “Technologic” and “dialer.TO”. Montes has done so for the last 5-10 years. *Montes Dep.* (Dkt. No. 127), p. 37 line 12 through p. 38, line 1; p. 38, line 6 through p. 39, line 9.
7. Montes owns the website located at autodialer123.com through which his customers sign up for his services. The website was used when he Montes operating as TollFreeZone.com, Inc. *Montes Dep.* (Dkt. No. 127), p. 23 line 17 through p. 24, line 12.
8. For some customers, if they provide their data, their message, and their caller ID, Defendants will set up the dialing campaigns for them. *Montes Dep.* (Dkt. No. 127), p. 102, lines 1-4.
9. For some customers, Montes will run their call campaigns, actually “hit[ting] send or start.” *Montes Dep.* (Dkt. No. 127), p. 117, lines 10-24.
10. Montes has recorded a “myriad” of training videos to teach his customers how to use Defendants’ system to place automated calls, and personally makes himself available to provide support and assistance to teach customers how to use the system. Montes provides such assistance to “[p]robably half” of his customers. *Montes Dep.* (Dkt. No. 127), p. 41, line 7 through p. 42, line 1.

11. A toll-free phone number on Defendants' website sends support calls to Montes' cell phone. *Montes Dep.* (Dkt. No. 127), p. 84, lines 13-19.
12. For some customers, Montes will conduct live training via the internet to multiple potential users. One such training session was discussed at length during Montes' deposition. *Montes Dep.* (Dkt. No. 127), p. 102, line 19 through p. 110, line 9.
13. Montes made the training videos himself and no one assisted him. *Montes Dep.* (Dkt. No. 127), p. 44, lines 7-10.
14. Montes' voice appears in several of these training videos. *Montes Dep.* (Dkt. No. 127), p. 77, lines 2-19; p. 82, lines 9-19; p. 85, line 23 through p. 86, line 7; p. 87, lines 12-22; p. 92, lines 9-19; p. 95, lines 10-19; p. 96, line 20 through p. 97, line 4; p. 100, line 17 through p. 101, line 1; p. 101, lines 12-21.
15. One such video, entitled "How to Make a Call Campaign and Schedule Get [sic.] the System to Dial out Your Campaign" instructs users how to set up an automated dialing campaign that will play a prerecorded message when somebody answers the phone. *Montes Dep.* (Dkt. No. 127), p. 77, lines 2-19; p. 80, lines 8-12.
16. Another such video entitled "How to Extract Report Data to Migrate" instructs users how to create a variety of different reports showing the results of their automated dialing campaigns. *Montes Dep.* (Dkt. No. 127), p. 92, lines 9-19; p. 94, line 1 through p. 95, line 6.
17. Another such video entitled "How to Start and Stop a Campaign" instructs users on "the entire process of, from beginning to end, of starting a campaign." *Montes Dep.* (Dkt. No. 127), p. 100, line 17 through p. 101, line 11.

18. Without Defendants or someone else who provides the same service, his customers would not be able to place high volumes of automated calls sending out prerecorded messages to a large number of phone numbers at the same time. *Montes Dep.* (Dkt. No. 127), p. 120, lines 7-12.
19. Montes is the sole owner of Tollfreezone.com, Inc. *Montes Dep.* (Dkt. No. 127), p. 18, line 23 through p. 19, line 10.
20. Montes owns the website located at autodialer123.com through which his customers sign up for his services.
21. The website located at autodialer123.com was used when Montes was operating as TollFreeZone.com, Inc. *Montes Dep.* (Dkt. No. 127), p. 23 line 17 through p. 24, line 12.
22. Defendants' customers include, but are not limited to Jerry Maurer, Brian Kaplan, 8 Figure Dream Lifestyle, and Elite Marketing Alliance. *Montes Dep.* (Dkt. No. 127), p. 119, line 20 through p. 120, line 6.
23. The sign-up form for new customers on the website located at autodialer123.com lists other businesses, including Elite Profit System, Enagic, Tidom, and Secret Success Machine a/k/a SSM. *Montes Dep.* (Dkt. No. 127), p. 28, line 22 through p. 29, line 3.
24. Plaintiff received unsolicited telemarketing calls from the following individuals and businesses whom Montes identified were customers for whom Defendants provided the platform to facilitate their robo-call telemarketing sales campaigns: Jerry Maurer, Brian Kaplan, 8 Figure Dream Lifestyle, and Elite Marketing Alliance. *Declaration of Plaintiff*, ¶ 4.

25. Plaintiff received unsolicited telemarketing calls from the following businesses, who are listed on Defendants' autodialer123.com sign-up page under the drop-down menu titled "Type of Business": Elite Profit System, Enagic, Tidom, and Secret Success Machine a/k/a SSM. *Declaration of Plaintiff*, ¶ 5.
26. Plaintiff received unsolicited telemarketing calls from four individuals who specifically told Plaintiff they obtained his telephone number through Montes: Terryle Butts, Bill White, Rich Holman, and Marc Wilson. *Declaration of Plaintiff*, ¶ 6.
27. The unsolicited telemarketing calls Plaintiff received from Jerry Maurer, Brian Kaplan, 8 Figure Dream Lifestyle, Elite Marketing Alliance, Elite Profit System, Enagic, Tidom, Secret Success Machine a/k/a SSM, Terryle Butts, Bill White, Rich Holman, and Marc Wilson occurred between 2015 and 2018. *Declaration of Plaintiff*, ¶ 7.
28. Plaintiff does not maintain his cellular telephone numbers for the purpose of pursuing Telephone Consumer Protection Act ("TCPA") lawsuits. *Declaration of Plaintiff*, ¶ 9.
29. Plaintiff does not invite telemarketing calls from any of the individuals or businesses listed above, nor from any other telemarketers. *Declaration of Plaintiff*, ¶ 10.
30. Plaintiff does not hope for telemarketers to call him so that he can file lawsuits against them. *Declaration of Plaintiff*, ¶ 11.
31. Plaintiff believes it is important to stand up for his rights and hold individuals and companies who violate the TCPA to their obligations under the law. *Declaration of*

Plaintiff, ¶ 12.

32. Plaintiff found the unsolicited telemarketing calls that are at issue in this case to be an invasion of his privacy, a waste of his time, an interruption and distraction of the regular business of his day, and a frustrating annoyance. *Declaration of Plaintiff*, ¶ 13.
33. Plaintiff kept track of the calls at issue in this case and filed this lawsuit to hold Defendants accountable under the law, and to stand up for himself when his privacy was invaded. *Declaration of Plaintiff*, ¶ 14.

RESPECTFULLY SUBMITTED,

CRAIG CUNNINGHAM

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CERTIFICATE OF SERVICE

I hereby certify that, on February 15, 2019, a copy of the foregoing Proposed Findings of Fact was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ David B. Levin
Attorney for Plaintiff